

110TH CONGRESS
1ST SESSION

S. 1134

To maximize transparency and accountability for direct appropriations to non-Federal entities, including those instances when Congress appropriates funds to a Federal agency specifically in order to contract with a congressionally identified non-Federal entity.

IN THE SENATE OF THE UNITED STATES

APRIL 17, 2007

Mr. NELSON of Nebraska (for himself and Mr. BROWNBACK) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To maximize transparency and accountability for direct appropriations to non-Federal entities, including those instances when Congress appropriates funds to a Federal agency specifically in order to contract with a congressionally identified non-Federal entity.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Transparency in Fed-
5 eral Funding Act of 2007”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Article I of the Constitution provides Con-
2 gress with the power to set the spending policies of
3 the United States. This power includes the authority
4 to direct funding to identified entities within the 50
5 States and territories of this Nation and to direct
6 executive branch agencies to enter into contracts
7 with identified entities within these same States and
8 territories. As such, Congress expects executive
9 branch agencies to comply with congressional fund-
10 ing directives.

11 (2) Our system of Government has checks and
12 balances, and it has come to the attention of Con-
13 gress that executive branch departments and their
14 component agencies occasionally retain a portion of
15 funds appropriated by Congress to non-Federal enti-
16 ties, including those instances when Congress appro-
17 priates funds to a Federal agency specifically in
18 order to contract with a congressionally identified
19 non-Federal entity.

20 (3) Members of Congress are required to pro-
21 vide justification for earmarks and, likewise, the ex-
22 ecutive branch should provide justification as to why
23 earmarked funds are used for another purpose.

24 (4) Our constituents are entitled to know, in
25 advance, whether they will receive the full amount of

1 an appropriation, or only a percentage of it, so they
2 can plan accordingly.

3 (5) The practice of agency take-downs results
4 in increased and unintentional spending in the Fed-
5 eral bureaucracy.

6 (6) The practice of widespread and unaccount-
7 able agency take-downs is likely to result in artifi-
8 cially inflated appropriations requests in order to ac-
9 count for the agency take-downs.

10 (7) Full transparency with respect to agency
11 take-downs will lead to better decision-making by
12 Members of Congress when allocating constituent re-
13 quest amongst departments, agencies, and accounts.

14 (8) Accountability and transparency are vitally
15 important to the legislative process.

16 **SEC. 3. EARMARK.**

17 In this Act—

18 (1) the term “administrative take-down” means
19 any action by an agency administering a congres-
20 sionally directed earmark which results in the con-
21 gressionally directed recipient of such earmark or
22 the congressionally directed recipient of a Govern-
23 ment contract receiving less than 100 percent of
24 such earmark or contract;

1 (2) the term “assistance” means budget author-
2 ity, contract authority, loan authority, and other ex-
3 penditures; and

4 (3) the term “earmark” means a legislative pro-
5 vision or report language included primarily at the
6 request of a Senator, Member of the House, Dele-
7 gate, or Resident Commissioner, that provides, au-
8 thorizes, or recommends a specific amount of discre-
9 tionary budget authority, credit authority, or other
10 spending authority for a contract, loan, loan guar-
11 antee, grant, loan authority, or other expenditure
12 with or to an entity, or targeted to a specific state,
13 locality, or Congressional district, other than
14 through a statutory or administrative formula driven
15 or competitive award process.

16 **SEC. 4. DISCLOSURE AND REPORTING.**

17 (a) IN GENERAL.—Not later than January 31 of
18 each year, each cabinet-level department and independent
19 agency that administers a program that contained an ear-
20 mark in the preceding year shall report to Congress dis-
21 closing whether any portion of the earmarked funds in the
22 preceding year were retained by the agency or any other
23 organization tasked with distributing them.

1 (b) CONTENTS.—A report required by this section
2 shall include an accounting of all funds retained includ-
3 ing—

4 (1) how much money and the percentage re-
5 tained;

6 (2) the purpose for which these retained funds
7 were used;

8 (3) a justification for the purpose for which
9 these funds were spent; and

10 (4) the authority by which the agency retained
11 the funds.

○